IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1114 OF 2002

IN

SUMMONS FOR JUDGMENT NO.894 OF 2000

IN

SUMMARY SUIT NO.1189 OF 2000

1.Manharlal Hakimchand Vora & Anr. ...Appellants.

vs.

1.M/s.Pooja Silk Mills and ors. ...Respondents.

Mr.A.A.Joshi, for Appellants.

Mr.Subodh Joshi with A.K.Hatim i/b. Nandlal Kothari & Sabir,for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 1st November,2007.

P.C.:-

1. This appeal is preferred by the original defendant nos. 4 and 5 against the order dated 22.7.2002 passed in Summons for Judgment no.894 of 2000 in Summary suit no.1189 of 2000, by the learned Single Judge of this Court. By that order the learned Single Judge has granted leave to defend to defendant nos.4 and 5 on condition of their depositing the amount of Rs.30,00,000/- in the Court. The respondent filed summary suit no.1189 of 2000 basing its claim on a cheque which, according to the plaintiff, was issued by the defendant no.1 Vora & Vora, a private trust, which according to the plaintiff, was dishonoured and therefore, the suit was filed. According to the plaintiff, the defendant nos. 2, 3, 4 and 5 were the trustees of defendant no.1-Trust. The summons for judgment taken out in the suit was contested by the defendant nos. 4 and 5. Their contention therein was that the cheque on the basis of which the present suit has been filed was issued on 25.2.1997 whereas as per the trust deed

dt.17.6.1980 by which the defendant no.1-trust was created, the trust was to stand dissolved on 16.6.1995 if not dissolved earlier than 16.6.1995. Therefore, according to the defendant nos. 4 and 5, on the date on which the cheque is alleged to have been given on behalf of the trust, the trust itself was not in existence. The defendant nos.4 or 5, admittedly, have not signed that cheque and therefore, they cannot be held liable. It was also contended that the transaction as narrated in the plaint is that the promissory note dt.3.2.1997 was signed on behalf of defendant no.1-Trust. Perusal of that promissory note shows that there “VORA & VORA” is described as a Company incorporated under the Companies Act and not as a private trust. It is further pointed out that the cheque on the basis of which the suit has been filed, a copy of which is at Exhibit D, shows that it is signed by somebody not as trustee of “Vora and Vora” but as its proprietor. The cheque is also not signed by defendant nos. 4 or 5. The learned Single Judge has rejected this contention by holding that there is some other suit filed in which it has been found that the trust is in

existence. The other contentions urged do not appear to have been considered by the learned Single Judge.

2. We have heard the learned Counsel appearing for both the sides. Perusal of the Trust deed, prima facie, shows that the trust was to stand dissolved automatically on 16.6.1995. Therefore, unless the plaintiff proves otherwise, one will have to prima facie accept that in the year 1997 the trust was not in existence. Perusal of the promissory note which was the consideration for issuing cheque on which the suit is based shows that it is signed by somebody on behalf of “Vora and Vora” a company incorporated under the Companies Act and not “Vora and Vora” a private trust. Even perusal of the copy of cheque on which the suit is based shows that it is signed by somebody as proprietor for Vora and Vora and not as trustee of Vora and Vora, a private trust. It is, thus, clear to our mind that the defendant nos. 4 and 5 had pointed out the defence which needs trial. In other words, the defence raised by the defendant nos. 4 and 5 cannot be termed as merely a moonshine defence. Therefore, in our opinion, the defendant

nos. 4 and 5 are entitled to unconditional leave to defend.

3. In the result, the appeal succeeds and is allowed. The order passed by the learned Single Judge dated 22.7.2002 in Summons for Judgment no.894 of 2000 is set aside. The defendant nos.4 and 5 are granted unconditional leave to defend the suit. They are directed to file their written statement within a period of eight weeks from today. No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)